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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9373 OF 2003

Shetkari Sah. Sangh Ltd., Kolhapur ... Petitioner

V/s

Asstt. Provident Fund Commissioner ... Respondent

Mr. M.S.Topkar for the petitioner.

Mrs. S.V. Bharucha for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 23RD OCTOBER, 2007.

P.C.:

1. This petition has been filed against the order passed by the Assistant Provident Fund Commissioner, Sub-Regional Office, Kolhapur, rejecting the application for setting aside the ex-parte order passed under 7A(4).

2. The facts giving rise to the present petition are as follows:-

. The petitioner was issued an order under Section 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 on 26.7.2003. This order was

passed ex-parte. The petitioner, therefore, filed an application on 22.8.2003 for setting aside the ex-parte order, immediately after the receipt of the order under Section 7A(1). The respondent has dismissed the application on the ground that no satisfactory reason was given by the petitioner for setting aside the order passed under Section 7A(1). The respondent concluded that the petitioner had sufficient opportunity to appear before him during the course of the enquiry conducted under Section 7A(1) of the Act.

3. A perusal of the order passed under Section 7A(1) indicates that an opportunity was given to the petitioner to appear on 6.5.2003 and again on 23.6.2003. On 6.5.2003 when the petitioner appeared, it filed documents in order to satisfy the respondent that they were not liable for payment of the amount demanded. The notice of 23.6.2003 has not been received by the petitioner as averred in their petition. There is no reply to the petition nor is there any document produced before me indicating that the petitioner had received the notice informing it that the hearing would be held on 23.6.2003. In view of these facts, the application for setting aside the ex-parte order must be allowed.

4. The order passed under 7A (4) is set aside and the

enquiry under Section 7A shall continue.

5. The petitioner will appear before the respondent on 26.11.2007 at 11.00 a.m.

6. The petition is disposed of accordingly.

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